

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SINGULAR COMPUTING LLC,)
)
Plaintiff) Civil Action
)
) No. 19-12551-FDS
vs.)
)
GOOGLE LLC,)
Defendant)

BEFORE: CHIEF JUDGE F. DENNIS SAYLOR, IV

STATUS CONFERENCE CONDUCTED BY VIDEO CONFERENCE

John Joseph Moakley United States Courthouse
1 Courthouse Way
Boston, MA 02210

May 26, 2022
3:32 p.m.

Valerie A. O'Hara, FCRR, RPR
Official Court Reporter
John Joseph Moakley United States Courthouse
1 Courthouse Way
Boston, MA 02210
E-mail: vaohara@gmail.com

1 APPEARANCES:

2 For The Plaintiff:

3 Prince, Lobel, Tye, LLP, by PAUL J. HAYES, ESQ.,
4 and KEVIN GANNON, ESQ., One International Place, Boston,
Massachusetts 02110;

5 For the Defendant:

6 Keker, Van Nest & Peters LLP, by MATTHIAS A. KAMBER,
7 ESQ., MICHELLE YBARRA, ATTORNEY, VISHESH NARAYEN, ESQ. and
ANDREW BRUNS, ESQ., 633 Battery March Street, San
8 Francisco, California 94111.

9 Kwun, Bhansali, Lazarus LLP, by ASIM M. BHANSALI,
10 ESQ., 555 Montgomery Street, Suite 750, San Francisco,
California 94111;

11 Wolf, Greenfield & Sacks, P.C., by NATHAN R. SPEED,
12 ESQ., 600 Atlantic Avenue, Boston, Massachusetts 02210.

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1 PROCEEDINGS

2 THE CLERK: Court is now in session in the matter
3 of Singular Computing LLC vs. Google, LLC, Civil Action
4 Number 19-12551.

5 Participants are reminded that photographing,
6 recording, and rebroadcasting of this hearing is
7 prohibited and may result in sanctions.

8 Would counsel please identify themselves for the
9 record, starting with the plaintiff.

03:32PM 10 THE COURT: I think you're mooted.

11 MR. HAYES: Paul Hayes for the plaintiff.

12 MR. GANNON: Kevin Gannon for the plaintiff.

13 THE COURT: Good afternoon.

14 MR. SPEED: Good afternoon, your Honor, this is
15 Nathan Speed from Wolf, Greenfield & Sacks on behalf of
16 the defendant, Google. I'm joined by several other
17 colleagues. I'll allow them to introduce themselves
18 quickly.

19 MR. KAMBER: Good afternoon, your Honor,
03:33PM 20 Matthias Kamber also on behalf of Google.

21 THE COURT: Good afternoon.

22 MR. BHANSALI: Asim Bhansali also on behalf of
23 Google.

24 THE COURT: Good afternoon.

25 MS. YBARRA: Good afternoon, your Honor,

1 Michelle Ybarra from Keker, Van Nest & Peters also on
2 behalf of Google. I'm joined by my colleagues,
3 Vishesh Narayen and Andrew Bruns also on the line.

4 THE COURT: Good afternoon. All right. This is
5 a status conference in this case, which we're doing by
6 video. There are, I think, an unusual number of balls in
7 the air or loose ends, if you want to use a different
8 metaphor, one of which is the claim construction opinion,
9 which I have not issued yet, obviously.

03:33PM 10 I don't have a particular timetable for doing
11 that. I understand it's frustrating for counsel not to
12 have that yet.

13 By way of mitigation only, I'm just coming off of
14 COVID, and I'm also finishing a major trial and have had
15 my hands full the last month or so, but I should be coming
16 up for air next week, but -- well, let me turn it over to
17 the parties about where you think we ought to go from here
18 and on what timetable.

19 Mr. Hayes, I'll start with you.

03:34PM 20 MR. HAYES: Yes, your Honor, as you know, a year
21 has gone by, and, in our view, we're back to where we
22 started approximately a year ago. For your information,
23 the two primary -- there's two primary patents in the
24 case, the '273 and '156.

25 Each of them has -- each, all of the asserted

1 claims in those patents was held valid in the IPR, so
2 that's it for that point of view.

3 With respect to the last patent, which is the
4 '961, the claims were validated. We, as suggested by
5 Google, we agree to drop that case, we'll do it by
6 dismissal without prejudice, get rid of it for the
7 purposes of this case, for this suit, and go on.

8 With respect to Google II, as you know, or you
9 might not know, there was a subsequent case filed, which
03:35PM 10 we call Google II on two more patents, and, again, as the
11 suggestion of Google, we'll agree to dismiss that without
12 prejudice to get rid of it.

13 The idea from my point of view is that now we end
14 up in this case with two patents on '273, '156, a total of
15 two claims for trial, and then we proposed a schedule,
16 which you have, to get that to trial before the 12th of
17 never, and our position is simply that we would like to
18 have -- we've set forth our dates, which would finish
19 expert discovery by approximately mid-October, which would
03:36PM 20 at least hopefully allow for a pretrial in December and
21 possibly a trial next year in January, which would put us
22 three years plus from filing.

23 Now, with respect to our position on Google's
24 schedule, which I got last night about 5:00, but, in any
25 event, who cares, they don't want to start, even start

1 anything until you issue a decision on the Markman, and
2 then assuming you did it with miraculous speed, within a
3 month, we wouldn't get under their theory of discovery, we
4 wouldn't even get to finish expert depositions until
5 almost the end of December, which is our view basically as
6 close to the 12th of never because then all the rest of it
7 comes, and then we have a trial, et cetera.

8 So I would urge the Court to just set a schedule
9 that we proposed, and, by the way, it's the identical
03:38PM 10 schedule in the sense of month, month, month, you know,
11 July 15th we propose you have your expert disclosure, then
12 you've got another 30 days, and then the depositions.
13 This is exactly what you wanted, they agreed to before,
14 and I think that that's the way it goes.

15 With respect to claim construction, obviously, I
16 don't see any reason to hold it all up in the schedule and
17 predicate it all upon a receipt of claim construction
18 because then they'll file motion upon motion to do this,
19 this and everything else, and, I mean, you already
03:38PM 20 indicated we've already briefed it, argued it, videoed it
21 and did whatever we did to it, and I'm sure they want to
22 redo it and take forever. That might just end two years
23 from now so that's where we're coming from, Judge.

24 We don't think that there's any problem with you
25 just issuing a claim construction ruling. It's all been

1 briefed, nothing new, mostly it's ordinary, you know,
2 plain and ordinary, that's the issue, and off we go.

3 So that's the scenario, so, I mean --

4 THE COURT: Okay.

5 MR. HAYES: Unfortunately, I must say for the
6 benefit of my client is that, you know, we spent over
7 half, about \$400,000 in a year wasting time.

8 So our position is the bottom line in our
9 position on this whole case is there's only two ways to
03:39PM 10 resolve this case, like any other case that I've had
11 forever, 1, we get a trial and a verdict, or, 2, we get a
12 meaningful mediation after we complete expert discovery
13 and everybody, particularly Google, knows what everybody's
14 facing, and we would like to do that so we could at least
15 get a mediation at the end of the year or get a trial to
16 put some pressure on somebody to negotiate, so that's it.

17 I won't comment too long on my Brother's brief
18 that I said, tried to argue about how we lost everything
19 in the IPR, but, boy, because we won everything. All
03:40PM 20 asserted claims that I just got through talking about were
21 held valid, period, so that's it, and so we have to go up
22 the hill, and, you know, you're at the top of the hill, so
23 it's up to you to figure out what you want to do.

24 THE COURT: All right. Simple as that, all
25 right. Mr. Speed, are you going to take the lead here?

1 MR. SPEED: It will be Mr. Kamber actually.

2 THE COURT: Okay.

3 MR. KAMBER: Thank you, your Honor. Again,
4 Matthias Kamber on behalf of Google. Let me start by
5 saying one of the issues we were prepared to discuss today
6 was this possibility of consolidation with the second
7 case. That seems moot in light of what I just learned
8 moments ago, which is that Singular is willing to drop
9 that case. We'll have to figure out how to do that. We
03:41PM 10 have answered at this point, so we'll discuss that with
11 them, but let me turn to the other issues, at least with
12 respect to now this case.

13 As Mr. Hayes mentioned, there are two claims
14 left. There's one claim each of these two patents. They
15 will no longer assert the two claims that have been
16 invalidated of the '961 patent.

17 We assume, at least for purposes of the schedule,
18 that they are not going to be appealing those decisions,
19 and I want to get to that in just a moment, but I first
03:42PM 20 want to address the scheduling point in terms of the
21 proposal and the fixed dates that are in Singular's
22 proposal.

23 We've tried to trigger this off of the dates or
24 tried to trigger our dates off of when the Court issues a
25 Markman ruling. Hopefully your Honor is feeling better,

1 and that can be sooner, but if it is later, then I think
2 it makes practical sense to have the dates triggered off
3 of the Markman. That's pretty typical for a lot of
4 schedules that we've seen.

5 The one additional note is Mr. Hayes mentions
6 opening reports, a month later having these other reports.
7 We have proposed I think 42 days in between some of the
8 reports just conscious of the fact that these might be
9 over the summer when people have family vacations and
03:43PM 10 otherwise that kind of eat into it, so having an extra
11 week or two over the course of the summer would be I think
12 particularly helpful for the parties, not just us but the
13 other side as well.

14 So we are all for moving towards trial in a
15 reasonable schedule. We think our proposal is a
16 reasonable one to get us there in due course. We're also,
17 of course, amenable to a mediation at an appropriate time.
18 I don't believe we've ever suggested otherwise, so I think
19 that all makes sense.

03:43PM 20 Let me go back to this question. Mr. Hayes seems
21 to suggest that this has all been a waste of time, and
22 that's not true at all because we now know which claims
23 have been invalidated and which claims have surprised the
24 PTAB proceedings, and that has implications for the course
25 of the case in terms of what can be claimed as inventive

1 or not, what are the damages associated with it.

2 Right now we're measuring the value of the delta
3 between the invalidated claims and the value of these are
4 both double dependent claims that have survived the PTAB
5 proceedings, and what we need to know is whether or not
6 Singular is going to be appealing those rulings because if
7 their position is going to be that the invention of using
8 low-precision computations in these computing units, these
9 execution units, still stands and stands until they get a
03:45PM 10 final judgment on these PTAB proceedings, then there are
11 going to be issues left and right when it comes to
12 opinions and Daubert motions, excuse me, opinions and
13 expert reports related to Daubert motions, potentially
14 motions in limine, and so I think it's fair to ask whether
15 or not those issues are going to be resolved or whether
16 they're going to be taking this issue up on appeal.

17 THE COURT: All right. I thought I heard them
18 say they were going to dismiss, well, dismiss without
19 prejudice, I guess. Mr. Hayes, do you want to respond to
03:45PM 20 that?

21 MR. HAYES: That's correct. With respect to the
22 one patent where the claims were held invalid, we do
23 indeed intend to appeal those. We intend to try to
24 dismiss without prejudice to get it out of here, and if my
25 Brother is concerned about somehow that three years hence

1 after all of this fesses out, we're going to come and sue
2 them again on the '961 patent, we would offer them a
3 covenant not to sue.

4 We're not appealing that because of the fact that
5 for this case, move down the road, who knows what other
6 defendants may pop up or whatever, but, I mean, that
7 really has nothing to do with the present circumstance
8 that we're in, and, you know, my brother's argument
9 somehow the only claims are invalidated were the
03:46PM 10 nonasserted claims. They have nothing to do with damages,
11 frankly, and they can argue all they want about it, but
12 that's all motions, arguments, or whatever, but that's not
13 a reason to delay a schedule in order to get this case to
14 trial, not at all.

15 And on that, point, Judge, I forgot to mention to
16 you, in their schedule, they put that somehow after your
17 decision and 28 days go by, or 28, whatever it is, they
18 want to file another 28 days to file some amendment to
19 amend stuff based on your ruling, which we haven't had,
03:47PM 20 they don't have a -- that is so that you know a -- that
21 they have to move for. They have to get leave of court to
22 do it, and they do not get to amend anything unless your
23 ruling is, quote, "unexpected, new or something out of the
24 blue." That's the law. You don't get it automatically,
25 so all of this, we don't need to go into all of this stuff

1 and certainly do not have to predicate a schedule based on
2 motions that who knows when they're going to get filed,
3 so, in any event, so that's that. That's our position.

4 Obviously, I'm sure you're aware that to the
5 extent they argue claim construction and the rest in the
6 IPR, it's just not binding on you. In fact, you don't
7 have to give it any deference.

8 THE COURT: Okay.

9 MR. KAMBER: Your Honor, may I respond briefly?

03:48PM 10 THE COURT: Yes.

11 MR. KAMBER: We're not looking to use this as a
12 delay. We're raising an issue with the case. Mr. Hayes
13 says it's true, the asserted claim has survived, but the
14 underlying independent claim has not. Our point is just
15 that that is going to have an impact in terms of the
16 potential damages because Google was allowed to practice
17 the independent claim. The only damages that would be
18 appropriate would be the differential, the delta between
19 the independent claim and the claims that they have
03:49PM 20 asserted and survive.

21 My second point is I hear or I understand at
22 least Mr. Hayes to be saying that they intend to appeal
23 the decision on the '961 patent. He hasn't mentioned
24 whether he intends to appeal the decision on those
25 independent claims with respect to the remaining '273 and

1 '156 patents.

2 I assume by not mentioning it that he does not
3 intend to appeal that, and in which case there is no issue
4 and we can move forward, but, lastly, I want to just
5 address this point about amending the contentions.

6 I think your Honor has had enough patent cases
7 that you know that sometimes the claim construction ruling
8 may have an impact on the case and what the arguments on,
9 frankly, Mr. Hayes may be the one seeking to amend his
03:49PM 10 infringement contentions in response, and then in which
11 case, of course, I think we would have a right to have a
12 response in terms of amended invalidity contentions.

13 What we're trying to do is just bake in a
14 reasonable amount of time to allow that to happen before
15 the case goes into or as the case goes into expert
16 discovery.

17 THE COURT: As to the last point about amended
18 contentions, we'll cross that particular bridge if and
19 when we come to it. In my experience, just about nothing
03:50PM 20 delays patent cases more than that if somebody tries to
21 change the theory of the case after claim construction,
22 but we'll worry about that when and if it happens.

23 All right. What I'm going to do is this, I'm
24 going to take all this under advisement. I appreciate
25 your patience. This is not perfect, to say the least.

1 I'm not complaining, I'm just stating a fact that we, as a
2 court, and I individually are trying cases and scheduling
3 trials that should have been tried two years ago. You
4 know, we just have a backlog that we're working our way
5 through, and it's just a fact.

6 And, of course, COVID has not yet disappeared,
7 unfortunately. Before very long passes, I do want to set
8 a trial date, and I'm going to work backwards from some of
9 that. It's hard to turn on a dime, you know, with your
03:51PM 10 schedule, my schedule for a significant case.

11 I don't think that late winter or spring is an
12 unrealistic time frame by any means, but I want to sort of
13 think through all of that and talk about how much time we
14 would need to set aside, but I'm not, you know, I can't do
15 this on, you know, two or three weeks' notice. I think
16 setting it the better part of a year in advance is the
17 better way to go.

18 But, in the meantime, I'm going to think about
19 all this and the timetable going forward, and I will issue
03:52PM 20 orders when I think it's appropriate to issue them. Okay.

21 MR. HAYES: Thank you, Judge.

22 MR. KAMBER: Thank you, your Honor.

23 THE COURT: Thank you, all, and unless there's
24 anything else, have a good Memorial Day weekend, all.

25 MR. HAYES: Stay safe.

1 (Whereupon, the hearing was adjourned at
2 3:51 p.m.)

3 C E R T I F I C A T E

4
5 UNITED STATES DISTRICT COURT)
6 DISTRICT OF MASSACHUSETTS) ss.
7 CITY OF BOSTON)

8 I do hereby certify that the foregoing
9 transcript, Pages 1 through 15 inclusive, was recorded by
10 me stenographically at the time and place aforesaid in
11 Civil Action No. 19-12551-FDS, SINGULAR COMPUTING LLC vs.
12 GOOGLE LLC and thereafter by me reduced to typewriting and
13 is a true and accurate record of the proceedings.

14 Dated June 1, 2022.

15 s/s Valerie A. O'Hara

16 _____
17 VALERIE A. O'HARA

18 OFFICIAL COURT REPORTER
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